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Subject: Inside EPA - CASAC

Former CASAC Chair Says Panel Dismissals Will Weaken NAAQS' Legality

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Former EPA Clean Air Scientific Advisory Committee (CASAC) Chairman Chris Frey is warning the agency's sudden disbanding of advisory panels for reviewing its ozone and particulate matter (PM) standards will weaken the quality of the reviews and make the resulting standards more vulnerable to legal challenges.

"The main implication is the agency is not committed to seriously look at the science regarding these two pollutants," Frey told *Inside EPA* in an exclusive Oct. 12 interview. He claimed the agency's move shows it is not serious about scientific scrutiny of its work, resulting in poor quality air rules vulnerable to legal attack.

EPA's Science Advisory Board (SAB) in [a brief Oct. 11 email](#) dismissed an existing panel that was part of CASAC advising the agency on its review of national ambient air quality standards (NAAQS) for particulate matter (PM). In another email to candidates for serving on a then-pending specialized panel to review the ozone NAAQS, EPA informed them that it will not be establishing the panel and will review the standard without them.

Instead, the agency's overhauled chartered CASAC, consisting of only seven members, will undertake to advise the agency on its review of the two major NAAQS without the assistance of the panels.

EPA last revised the PM NAAQS in 2012 and the ozone NAAQS in 2015, and the Clean Air Act mandates that the agency review its standards five years after their last revision. But the agency for years has fallen far behind schedule, prompting calls from industry groups and others to overhaul the NAAQS process.

Former EPA Administrator Scott Pruitt and acting agency chief Andrew Wheeler committed to completing both reviews by the end of 2020. But that tight deadline may now be impossible to meet without compromising the quality of scientific review, said Frey.

"It strains credulity that this [NAAQS timeline] is achievable without substantially compromising the scientific review" underlying revisions to the NAAQS, Frey said.

The seven-member chartered CASAC is comprised mostly of state air regulators, and includes only one research scientist, Mark Frampton, Frey noted. "You need more horsepower to do these reviews," he said.

Until EPA's abrupt announcement, Frey — who is a professor of environmental engineering at North Carolina State University, was a member of the CASAC panel to review the PM NAAQS, which is set at 12 micrograms per cubic meter.

He was also a candidate for the scrapped panel that would have reviewed the ozone NAAQS, which the Obama administration set in 2015 at 70 ppb.

If EPA and CASAC do not do a thorough job of reviewing the standards, the resulting rules are vulnerable to being reversed by the courts for being based on an inadequate scientific review that falls short of statutory requirements, Frey warned. "EPA is opening itself up to being challenged for lack of proper process. It comes across as very arbitrary and capricious," Frey said, citing the Clean Air Act's standard for judicial review of EPA decisions.

Although there is no statutory obligation for EPA to establish specialized panels to consider specific pollutants, Frey said that eliminating them will render CASAC unable to conduct a meaningful review — implying that a cursory review is more likely. "I don't see anything good about this in terms of the quality" of NAAQS reviews, he said.

CASAC's Review

EPA's Oct. 10 announcement of new members of the CASAC completes its replacement of all Obama-era members. In addition to existing CASAC members Anthony Cox, a consultant and chair of CASAC, and James Boylan of the Georgia Department of Natural Resources, the seven-member chartered CASAC will now include Mark Frampton, of the University of Rochester Medical Center; Sabine Lange, of the Texas Commission on Environmental Quality; Timothy Lewis, of the U.S. Army Corps of Engineers; Corey Masuca, of the Jefferson County, AL, Department of Health; and Steven Packham, of the Utah Department of Environmental Quality.

Prior to his resignation amid ethics scandals in July, Pruitt launched a bid to overhaul the NAAQS process. He penned a "back to basics" memo requiring that EPA meet the five-year review NAAQS review deadline, and proposing that the agency collapse distinct phases of the review process into fewer steps, producing fewer documents.

More recently, EPA air policy chief Bill Wehrum has called for less consultation with CASAC, for example with fewer EPA drafts of documents such as the integrated science assessment (ISA), which synthesizes the latest available science on the health effects of a NAAQS pollutant.

Clint Woods, Wehrum's deputy at EPA's Office of Air and Radiation, told *Inside EPA* on the sidelines of a Children's Health Protection Advisory Committee Oct. 11 that the chartered CASAC is going "to help lead that effort" on PM NAAQS. "I'm not sure exactly how that's going to work, we'll have to talk with the SAB staff office in light of the administrator's decisions on the chartered members. But I think for the ozone review it similarly indicated that the seven members would be leading that review for ozone too."

Woods said the idea "is to have them engaged at the front end of the process and leading that effort so it's not necessarily reviewing the subcommittee's recommendations and then go to the administrator but being actively involved in the science from the beginning." Woods was referring to the Oct. 10 announcement of new members of the chartered CASAC, which several sources say telegraphed the agency's intent to cut out specialized panels.

But the email to Frey is explicit on this point, saying that Wheeler "tasked the seven-member chartered CASAC to serve as the body to review key science assessments for the ongoing review" of PM NAAQS. "Therefore the CASAC PM Review Panel will no longer be involved with the Agency's PM NAAQS review."

On ozone, SAB says in the other email that in the light of Wheeler's announcement, "the Agency will not form a CASAC Ozone Panel," meaning only the seven-member full CASAC will do that review.

Frey's Concerns

Typically, Frey noted, CASAC panels have been taking at least three years to review all the documents associated with a NAAQS review, including the ISA, risk-and-exposure assessment which estimates risk to the public, and policy assessment that gives the EPA political leadership policy options.

Now, the agency is asking a small number of generalists to oversee EPA's work in not one but two high-profile reviews, to be completed in around two years. The dismissed PM panel numbered around 20 experts, by contrast. CASAC is supposed to be a science panel, "not a stakeholder panel," Frey said.

Further exacerbating the problem is the Trump EPA's directive that CASAC offer advice on a number of implementation concerns for NAAQS that it has previously not dispensed advice on.

The air law required CASAC to offer advice on, for example, the economic and energy costs associated with NAAQS. EPA has previously argued that this duty is not tied to any specific NAAQS review, and under Supreme Court precedent, the agency may not take implementation costs into account when setting NAAQS.

By forcing CASAC to consider these issues along with the ozone and PM reviews, the agency increases the likelihood it will set weaker standards than are necessary, critics say.

Frey warns that the projected folding of multiple review steps into fewer documents risks "co-mingling" scientific analysis with policy direction from political appointees, when EPA has sought in the past to separate the two. -- *Stuart Parker* (sparker@iwpnews.com)

Jason D. Sacks, M.P.H.

Epidemiologist

U.S. Environmental Protection Agency

National Center for Environmental Assessment

Phone: 919-541-9729

Fax: 919-541-1818

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